

National Credit Union Administration

§ 750.5

§ 750.4 Permissible golden parachute payments.

(a) A Federally insured credit union may agree to make or may make a golden parachute payment if:

(1) NCUA, with written concurrence of the appropriate state supervisory authority in the case of a state chartered credit union or corporate credit union, determines the payment or agreement is permissible; or

(2) An agreement is made in order to hire a person to become an IAP at a time when the Federally insured credit union satisfies or in an effort to prevent it from imminently satisfying any of the criteria in § 750.1(e)(1)(ii), and NCUA, with written concurrence of the appropriate state supervisory authority in the case of a state chartered credit union or corporate credit union, consents in writing to the amount and terms of the golden parachute payment. NCUA's consent will not improve the IAP's position in the event of the insolvency of the credit union since NCUA's consent cannot bind a liquidating agent or affect the provability of claims in liquidation. In the event the credit union is placed into conservatorship or liquidation, the conservator or the liquidating agent will not be obligated to pay the promised golden parachute and the IAP will not be accorded preferential treatment on the basis of any prior approval; or

(3) A payment is made pursuant to an agreement that provides for a reasonable severance payment, not to exceed twelve months' salary, to an IAP in the event of a merger of the Federally insured credit union; provided, however, that a Federally insured credit union must obtain the consent of NCUA before making a payment and this paragraph (a)(3) does not apply to any merger of a Federally insured credit union resulting from an assisted transaction described in section 208 of the Act, 12 U.S.C. 1788, or the Federally insured credit union being placed into conservatorship or liquidation; and

(4) A Federally insured credit union or IAP making a request pursuant to paragraphs (a)(1) through (3) of this section must demonstrate it does not possess and is not aware of any information, evidence, documents or other materials indicating there is a reason-

able basis to believe, at the time the payment is proposed to be made, that:

(i) The IAP has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the Federally insured credit union that has had or is likely to have a material adverse effect on the Federally insured credit union;

(ii) The IAP is substantially responsible for the insolvency of, the appointment of a conservator liquidating agent for, or the troubled condition, as defined by § 750.1(1), of the Federally insured credit union;

(iii) The IAP has materially violated any applicable Federal or state law or regulation that has had or is likely to have a material effect on the Federally insured credit union; or

(iv) The IAP has violated or conspired to violate sections 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18 of the United States Code, or sections 1341 or 1343 of that title affecting a Federally insured financial institution, as defined in title 18 of the United States Code.

(b) In making a determination under paragraphs (a)(1) through (3) of this section, NCUA may consider:

(1) Whether, and to what degree, the IAP was in a position of managerial or fiduciary responsibility;

(2) The length of time the IAP was affiliated with the Federally insured credit union and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment; and

(3) Any other factors or circumstances indicating the proposed payment would be contrary to the intent of section 206(t) of the Act or this part.

§ 750.5 Permissible indemnification payments.

(a) A Federally insured credit union may make or agree to make reasonable indemnification payments to an IAP, including advanced funds to pay or reimburse reasonable legal fees or other professional expenses incurred by an IAP in an administrative proceeding or civil action initiated by NCUA or a state regulatory authority if:

(1) The Federally insured credit union's board of directors, in good